



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/173053

PRELIMINARY RECITALS

Pursuant to a petition filed March 23, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance (MA), a hearing was held on May 16, 2016, at Menomonie, Wisconsin. A hearing scheduled for April 22, 2016, was rescheduled at the petitioner's request.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for speech therapy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Dunn County.

2. On December 22, 2015, the petitioner with Foundations Therapy, LLC, requested a half-hour speech and language therapy session every other week for 26 weeks. Foundations resubmitted the request on January 26, 2016, and February 8, 2016, because the department sought more information. The department denied the request on February 11, 2016.
3. The petitioner is a 13-year-old boy diagnosed with Down Syndrome and apraxia.
4. The petitioner's IEP indicates he receives speech and language therapy for 60 minutes each week, but he has not actually received those services since October 2015.
5. The petitioner can say three to four-word sentences, but, other than his parents, no one, including his therapist, can understand them. He was only able to directly imitate a few consonant and a couple vowel sounds. His speech has deteriorated in the last couple years, and now his parents have difficulty understanding him.
6. The petitioner has had speech therapy since early childhood, including therapy he received in the Birth-To-Three program, but his current request is the first prior authorization he has submitted for private speech therapy.
7. The petitioner's preferred means of communication is verbal. He is described as very social and he will stop and talk with people he passes.
8. Foundations' long-term goal is for the petitioner to "improve functional speech productions to communicate more effectively with others." It set the following short-term goals:
 - a. [Petitioner] will produce stop-plosives [sic] within his phonetic inventory at the final position of VC/VCVC/CVC word structures within direct imitation of words and word lists at 85-90% accuracy.
 - b. [Petitioner] will produce /f,v/ targeted sounds within contexts of prevocalic targets.
 - c. [Petitioner] and his parents will practice target word lists provided through Systematic Articulation Therapy (SAT-PAC) and report results to SLP during each session.
9. Foundation's plan of care calls for the petitioner's parents to drill him every day for 5 to 10 minutes on the word list taught in the most recent session
10. Upon completion of speech therapy, Foundations anticipates that the petitioner will continue to require an augmented speech device.
11. Foundations' therapist indicated that evidence-based practice and research-driven strategies have proved successful with children exhibiting limited motor speech proficiencies. But she also told the petitioner's mother, "[His] wide tongue and lack of activation through cheek muscles definitely would affect his speech. I believe, additionally, just as he struggles to motor plan an carryout [sic] shoe tying, I would think that articulation would be at the mercy of his praxis concerns."

DISCUSSION

Medical assistance covers speech therapy, but recipients must obtain prior authorization after the first 35 visits. Wis. Admin. Code § DHS 107.18(2)(b). The petitioner and his therapist, Foundations Therapy, LLC, seeks a half-hour speech and language therapy session every other week for 26 weeks. His parents would supplement that therapy with daily five to ten-minute drills of a word list provided by the therapist.

When determining whether a service is necessary, the Division must review, among other things, the medical necessity, appropriateness, and cost of the service. Wis. Admin. Code, § DHS 107.02(3)(e). "Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, § DHS 101.03(96m).

The department contends that the requested therapy duplicates therapy the petitioner already receives through his school district. A review of his individualized education plan indicates that the school and Foundations have similar goals. But the petitioner's mother testified that, as far as she knew, the school hadn't actually provided therapy this therapy since October 2015, pointing out that the school's therapist has been on maternity leave and the school had not billed the Katy Beckett program. Based upon her assertions, I will assume that the petitioner does not receive therapy that duplicates the requested therapy.

The petitioner and his provider must prove by the preponderance of the evidence that he is entitled to the requested therapy. What this means is that they must show that it is more likely than not that the therapy will lead to some basic ability to speak intelligibly. The petitioner is a 13-year-old boy with Down Syndrome. His speech is unintelligible to anyone other than his parents, and lately his speech has declined to the point where they understand little of what he says.

Foundations' therapist indicated that evidence-based practice and research-driven strategies have proved successful with children exhibiting limited motor speech proficiencies. But she also told the petitioner's mother, "[His] wide tongue and lack of activation through cheek muscles definitely would affect his speech. I believe, additionally, just as he struggles to motor plan an carryout [sic] shoe tying, I would think that articulation would be at the mercy of his praxis concerns."

The petitioner is not one or two years old, but 13. When someone that age has no understandable vocabulary, he and his provider must present enough credible evidence that the requested therapy will allow him to develop some basic level of functional speaking ability. It is not enough to make a general statement that this type of therapy has helped other children with limited motor proficiency. Has it helped those with Down Syndrome? Will it help the petitioner? Foundations' own therapist seems skeptical that this will occur, as demonstrated by her caution to the petitioner's mother that articulation would be at the mercy of his praxis concerns.

This is not to say that there is no chance that the requested therapy will help the petitioner. His articulation used to be better, and maybe he can regain that level. But as he gets older, his mind and body changes. There is no evidence that these changes are not the cause of his decline. What is needed is some

objective evidence that he can reasonably be expected to improve, but there is none in his request. Because of this, he has not shown by the preponderance of evidence that the requested therapy will improve his ability to speak. Therefore, the department's denial of his therapy is upheld.

CONCLUSIONS OF LAW

The requested speech therapy is not medically necessary.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

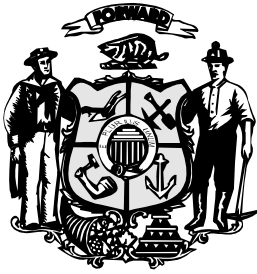
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 6th day of June, 2016

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 6, 2016.

Division of Health Care Access and Accountability